

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERENCE DANYIEL DEGRAFFENREID,

Defendant-Appellant.

UNPUBLISHED

April 11, 2006

No. 258577

Wayne Circuit Court

LC No. 04-006262-01

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with intent to murder, MCL 750.83, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to five to 15 years' imprisonment for the assault with intent to murder conviction, one to five years' imprisonment for the felon in possession of a firearm conviction, and to two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant's only issue on appeal is that there was insufficient evidence to support his assault with intent to murder conviction. We disagree. This Court reviews de novo challenges to the sufficiency of the evidence at a criminal trial. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In doing so, we view the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005).

Defendant argues that his assault with intent to murder conviction was not supported by sufficient evidence because he was acting in self-defense, and therefore, was guilty of only assault with intent to do great bodily harm. He reasons that he lacked the specific intent to kill required to commit an assault with intent to murder.

"The elements of the crime of assault with intent to murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993); see also *People v Brown*, 267 Mich App 141, 147-148; 703 NW2d 230 (2005). Evidence of a defendant's specific or actual intent to kill must be present in order to sustain a conviction for assault with intent to murder.

People v Taylor, 422 Mich 554, 567; 375 NW2d 1 (1985). The specific intent necessary to find an assault with intent to murder may be found by looking to:

“the nature of the defendant’s acts constituting the assault; the temper or disposition of mind with which they were apparently performed, whether the instrument and means used were naturally adapted to produce death, his conduct and declarations prior to, at the time, and after the assault, and all other circumstances calculated to throw light upon the intention with which the assault was made.” [*Id.* at 568, quoting *Roberts v People*, 19 Mich 401, 416 (1870).]

Each element of the offense, including the intent to kill, may be proven by circumstantial evidence and reasonable inferences arising from the evidence. *Warren (After Remand)*, *supra*; *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992).

When considered in a light most favorable to plaintiff the evidence offered at trial showed that defendant approached the victim, Raymond Thedford, and fired at close range. Thedford attempted to shield himself from the initial shots, but was struck in the right hand and neck. After Thedford ran away, defendant followed him and continued to shoot, striking Thedford in the left buttocks. Defendant caught up with Thedford as he lay on the ground and attempted to fire two more shots while standing over him. This evidence shows that defendant acted deliberately in aiming and firing his weapon multiple times at Thedford to effectuate the wounds that Thedford received. These deliberate acts support a finding that defendant intended to kill Thedford. See, e.g., *People v Drayton*, 168 Mich App 174, 177-178; 423 NW2d 606 (1988); see also *People v Harris*, 110 Mich App 636, 644-645; 313 NW2d 354 (1981).

Additionally, defendant admitted that he did not see Thedford with a weapon as he initially approached him. Thedford was in a defensive position when he sustained the wound to his hand and neck, and was running away as defendant fired three additional shots. The use of deadly force is justifiable “if the defendant honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm.” *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990). The jury was instructed on self-defense and found that defendant was not justified in shooting Thedford. This finding was supported by the evidence. Viewing the evidence in a light most favorable to the prosecution, we conclude that there was sufficient evidence that a rational trier of fact could find defendant guilty beyond a reasonable doubt of assault with intent to murder.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra